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*Attorney for Plaintiff,
Ericka Mendez,*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ericka Mendez,

Plaintiff,

v.

Progrexion Teleservices, Inc.,
A Delaware Corporation,

Defendant.

Case No.:

COMPLAINT

JURY TRIAL DEMAND

Plaintiff Ericka Mendez (Hereinafter “Ericka”) brings this action against Progrexion Teleservices, Inc. (Hereinafter “Defendant”), to recover compensation, lost wages, lost employment benefits, liquidated damages, actual damages, punitive damages, attorneys’ fees, costs, and additional relief as the

1 court sees fit for defamation, negligence, infliction of emotional distress, wrongful
2 termination and violations of the Family Medical Leave Act, 29 U.S.C. § 2601 *et*
3 *seq.* (“FMLA”),
4

5 **JURISDICTION AND VENUE**

- 6
- 7 1. This Court has subject matter jurisdiction under 29 U.S.C. § 2617(a)(2) and 28
8 U.S.C. § 1331.
 - 9 2. The transactions and occurrences which give rise to this action occurred in the
10 City of Phoenix, Maricopa County, Arizona.
 - 11 3. Venue is proper in the District of Arizona, because Defendant is located in
12 Phoenix, Arizona and Ericka worked for Defendant in Phoenix, Arizona.
13
14

15 **PARTIES**

- 16
- 17 4. Ericka was employed by Defendant.
 - 18 5. Ericka is a resident of Glendale, Arizona which is located in Maricopa County.
 - 19 6. Defendant is a Delaware corporation with its principal place of business in Salt
20 Lake City, Utah.
 - 21 7. Defendant is a telemarketing company that sells credit repair services.
 - 22 8. Defendant employs roughly 1,200 employees with call centers in numerous
23 different states.
 - 24 9. Defendant maintains an office in Phoenix, Arizona.
 - 25 10. Ericka worked at Defendant’s office in Phoenix, Arizona.
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1 11. At all material times, Defendant includes and included any and all parents,
2 subsidiaries, affiliates, divisions, franchises, partners, joint ventures, and
3 organization units of any kind, predecessors, successors and assigns and their
4 officers, directors, employees, agents, representatives and any and all other
5 persons acting on their behalf.
6

7
8 12. At all material times, each of the Defendant was the agent and employee of
9 every other Defendant in doing the events described and was at all times acting
10 within the purpose and scope of such agency and employment and are
11 vicariously liable under the theory of respondeat superior for the actions and
12 inactions of their employees and contractors.
13
14

15 **GENERAL ALLEGATIONS**
16

17 13. Ericka slipped and fell and suffered a head injury.

18 14. Ericka consulted a medical physician.

19 15. Ericka and her physician were concerned that she may have to miss work
20 because of the injury.
21

22 16. Ericka consulted with Defendant.

23 17. Ericka's health care provider submitted the Medical Leave Certification Form,
24 form WH-380, to Defendant so that Ericka could take leave under the FMLA.
25

26 18. Defendant acknowledged and verified that Ericka was being granted leave
27 under the FMLA.
28

1 19. Ericka took time off under the FMLA.

2 20. After taking time off, Ericka received a text message stating that she had been
3 terminated because of accrued absences.
4

5 21. Around the time Ericka was wrongfully terminated, she was assigned a new
6 supervisor.
7

8 22. The new supervisor was aware that Ericka was on FMLA.

9 23. Ericka's position was in sales.

10 24. Ericka had a sales goal assigned to her.

11 25. Ericka's supervisor had a sales goal assigned to him.

12 26. Upon information and belief, Ericka's supervisor did not want Ericka on his
13 team because he knew that Ericka would miss time pursuant to the FMLA
14 which in turn had the potential to affect his ability to meet his sales goal.
15

16 27. Ericka's sales goal was not adjusted to account for the leave she needed to take
17 under the FMLA.
18

19 28. Ericka's supervisor's sales goal was not adjusted to account for the leave that
20 Ericka needed to take under the FMLA.
21

22 29. Following, the message that Ericka received informing her of her termination,
23 Ericka reached out to Defendant informing them that she was on FMLA and
24 that her absences were covered under the FMLA.
25

26 30. Defendant did not respond.
27
28

1 31. Defendant knew that Ericka was on FMLA prior to her being terminated.

2 32. Ericka filed for unemployment benefits with the Arizona Department of
3
4 Economic Security.

5 33. The Arizona Department of Economic Security contacted Ericka and informed
6
7 her that she may be denied benefits due to the Defendant's response.

8 34. Upon information and belief, as part of that application process, Defendant
9
10 responded to Ericka's application by stating that Ericka was at fault for her
11 termination and that Ericka was terminated for unexcused absences.

12 35. The Department of Economic Security did a deeper investigation and
13
14 eventually granted Ericka unemployment benefits.

15 36. Ericka has lost wages because of Defendant's actions.

16 37. Ericka has suffered out of pocket losses because of Defendant's actions.

17 38. Ericka has suffered emotional anguish because of Defendant's actions.

18 39. Defendant acted with an evil mind.
19
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21

22 COUNT I

23 **VIOLATIONS OF THE FAMILY MEDICAL LEAVE ACT**

24 40. Ericka repeats and realleges each and every allegation as if fully set forth
25
26 herein.
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1 41. At all times relevant herein, Ericka was an “eligible employee” within the
2 meaning of the FMLA.
3

4 42. At all times relevant herein, Defendant was and is a “covered employer” within
5 the meaning of the FMLA.
6

7 43. At all times relevant herein, Ericka was a full-time employee of Defendant that
8 worked 1,250 hours or more during the twelve months prior to the start of any
9 leave constituting FMLA leave.
10

11 44. Ericka had worked for Defendant for at least 12 months before going on
12 FMLA.
13

14 45. At all times relevant herein, Defendant employed fifty (50) or more employees
15 at Ericka’s location of employment and/or within seventy-five (75) miles of
16 Ericka’s location of employment.
17

18 46. Defendant’s Phoenix location has employed over 50 employees for over a year.

19 47. By the actions described above, among others, Defendant violated the FMLA
20 by terminating Ericka for taking leave under the FMLA.
21

22 48. By the actions described above, among others, Defendant retaliated against
23 Ericka on the basis of her decision to exercise her rights under the FMLA.
24

25 49. As a direct and proximate result of Defendant’s violations of the FMLA,
26 Ericka has suffered, and continues to suffer, monetary and/or economic harm
27
28

1 for which she is entitled to an award of damages, in addition to reasonable
2 attorneys' fees and costs.

3
4 50. As a direct and proximate result of Defendant's violations of the FMLA,
5 Ericka has suffered, and continues to suffer, severe mental anguish and
6 emotional distress for which she is entitled to an award of compensatory
7 damages and other relief.

8
9 51. As a direct and proximate result of Defendant's violations Ericka's requests
10 and is entitled to but not limited to damages equal to the amount of wages and
11 benefits lost, monetary losses, interest and liquidated damages together with
12 appropriate declaratory and other equitable relief, together with attorneys' fees
13 and costs, and interest.

14
15 52. Defendant's unlawful and discriminatory actions constitute reckless,
16 intentional, malicious, willful and wanton violations of the FMLA for which
17 Ericka is entitled to an award of liquidated damages.

18
19
20 **COUNT II**

21 **DEFAMATION AND DEFAMATION *PER SE***

22
23 53. Ericka repeats and realleges each and every allegation as if fully set forth
24 herein.

25
26 54. Ericka is not a public figure.

1 55. Defendant's statements to the Arizona Department of Economic Security as
2 alleged herein constitute defamation.

3
4 56. Defendant negligently, if not knowingly and intentionally, responded to the
5 Arizona Department of Economic Security by making false and defamatory
6 statements concerning Ericka.

7
8 57. Defendant made these false and defamatory statements out of malice to ensure
9 that Ericka would not obtain unemployment benefits.

10
11 58. Defendant's statements impeached Ericka's honesty, integrity, virtue, and
12 reputation.

13 59. Defendant's statements caused damage to Ericka's reputation.

14
15 60. Defendant's statements called into question Ericka's lack of fitness for her
16 trade, business, or profession.

17 61. Defendant's statements have caused damage to Ericka.

18
19 62. Ericka suffers from distress as she is fearful that Defendant will continue to
20 make defamatory statements about her to potential employers that may choose
21 to contact Defendant.

22
23 63. Upon information and belief, Defendant has defamed Ericka, by telling other
24 individuals that Ericka was terminated due to unexcused absences.

25
26 64. Ericka's unemployment benefits application process took longer than normal
27 because of Defendant's defamatory statements.

28

1 65. During that time, Ericka suffered distress as a direct result of Defendants
2 statements because she had not yet received re-employment and was worried
3 about her financial situation.
4

5 66. Based upon Defendant's tortious acts of defamation *per se*, Ericka is entitled to
6 recover presumed damages, as well as general and special damages against
7 Defendant.
8

9 67. Defendant either intended to injure Ericka or consciously pursued a course of
10 conduct knowing that it created a substantial risk of significant harm to others,
11 thereby entitling Ericka to an award of punitive damages.
12

13 68. Defendant's statements were not in good faith as Defendant knew them to be
14 false or were made with reckless disregard for the truth and made them so that
15 Ericka would be denied unemployment benefits.
16

17 69. Defendant acted intentionally and maliciously and/or Defendant acted to serve
18 its own interests and having reason to know and consciously disregarding the
19 substantial risk that its conduct might significantly injure the rights of Ericka
20 and others, and consciously pursued a course of conduct knowing that it created
21 a substantial risk of significant harm to Ericka. Defendant, therefore, should be
22 liable to Ericka in the form of punitive or exemplary damage award under
23 Arizona law.
24
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26

27 **COUNT III**
28

**WRONGFUL TERMINATION – PUBLIC POLICY EXCEPTION TO “AT
WILL” RULE**

70. Ericka repeats and realleges each and every allegation as if fully set forth herein.

71. Defendant terminated Ericka in violation of public policy.

72. Defendant terminated Ericka for taking leave granted to her under the FMLA.

73. Ericka has been damaged as a direct and proximate Cause of Defendant’s conduct.

74. Defendant acted intentionally and maliciously and/or Defendant acted to serve its own interests and having reason to know and consciously disregarding the substantial risk that its conduct might significantly injure the rights of Ericka and others, and consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to Ericka. Defendant, therefore, should be liable to Ericka in the form of punitive or exemplary damage award under Arizona law.

COUNT IV.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

75. Ericka repeats and realleges each and every allegation as if fully set forth herein.

76. Defendant was negligent; Defendant’s negligence created an unreasonable risk of harm to Ericka; Defendant’s negligence was a cause of emotional distress to

1 Ericka; her emotional distress resulted in injury and distress; Ericka has
2 sustained and suffered damages.
3

4 **COUNT V.**

5 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
6

7 77. Ericka repeats and realleges each and every allegation as if fully set forth
8 herein.
9

10 78. Defendant's conduct about and toward Ericka was extreme and outrageous.

11 79. Defendant's conduct about and toward Ericka was either intentional or
12 reckless.
13

14 80. Defendant's conduct about and toward Ericka caused her to suffer severe
15 emotional distress.
16

17 81. Defendant acted intentionally and maliciously and/or Defendant acted to serve
18 its own interests and having reason to know and consciously disregarding the
19 substantial risk that its conduct might significantly injure the rights of Ericka
20 and others, and consciously pursued a course of conduct knowing that it created
21 a substantial risk of significant harm to Ericka. Defendant, therefore, should be
22 liable to Ericka in the form of punitive or exemplary damage award under
23 Arizona law.
24
25

26 **COUNT VI.**

27 **NEGLIGENCE – TRAINING, POLICIES, AND INVESTIGATION**
28

1
2 82. Ericka repeats and realleges each and every allegation as if fully set forth
3 herein.
4

5 83. Defendant owed a duty of due care and to act reasonably to Ericka and
6 breached that duty in that it acted unreasonably and inappropriately and was
7 negligent and careless (a) in firing Ericka in retaliation for her asserting her
8 legal rights; (b) by failing to properly and reasonably investigate the concerns,
9 complaints, and warnings Ericka brought to it in a fair, objective, impartial, and
10 reasonable manner while remaining objective and open-minded; (c) by not
11 properly training its personnel to conduct investigations in a reasonable and
12 appropriate manner and to keep and preserve all material evidence used to
13 support or justify an employee's discipline, including a firing or termination;
14 (d) by not creating and following reasonable and appropriate written policies
15 and procedures for its personnel to review, adhere to, and follow regarding and
16 during an investigation of an employee concern, complaint, or warning; (e) by
17 not properly supervising its management personnel; and (f) as alleged above.
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23 84. As a direct and proximate result of such negligence and carelessness, Ericka
24 has suffered and sustained damages, and will continue to suffer harms and
25 losses in the future.
26

27 85. Defendant acted intentionally and maliciously and/or Defendant acted to serve
28 its own interests and having reason to know and consciously disregarding the

1 substantial risk that its conduct might significantly injure the rights of Ericka
2 and others, and consciously pursued a course of conduct knowing that it created
3 a substantial risk of significant harm to Ericka. Defendant, therefore, should be
4 liable to Ericka in the form of punitive or exemplary damage award under
5 Arizona law.
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7

8 **WHEREFORE, ERICKA PRAYS** that this court grant her a judgment
9 against Defendant as follows:
10

- 11 A. For general damages in an amount deemed fair and reasonable by a jury,
12 but in any event well in excess of the minimum jurisdictional limits of
13 this Court;
14
15 B. For special damages in an amount to be proven at trial;
16
17 C. For all costs and attorney's fees incurred herein;
18
19 D. For exemplary or punitive damages;
20
21 E. For pre- and post-judgment interest to the extent provided by law; and
22
23 F. For such further relief as the Court deems just and proper.

24 **JURY DEMAND**

25 Ericka hereby demands a trial by Jury.

26
27 DATED: December 7, 2021

RANWICK & NOWICKI PLLC

By: /s/ Nicholas R. Nowicki

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